

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF WATER)	PRELIMINARY
MANAGEMENT WITHIN THE SOUTHEAST)	ORDER APPROVING GROUND
BOISE GROUND WATER MANAGEMENT)	WATER MANAGEMENT PLAN
AREA)	
)	

The Southeast Boise Ground Water Advisory Committee (advisory committee) submitted a ground water management plan to the Director of the Idaho Department of Water Resources (IDWR) for management of the Southeast Boise Ground Water Management Area, and requested that the plan be approved. Based on its review, IDWR issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Southeast Boise Ground Water Management Area (SBGWMA) was designated by order of IDWR on October 14, 1994, because of declining ground water levels.
2. The order creating the ground water management area required water users diverting in excess of 0.20 cfs to "install Department-approved monitoring equipment, and to participate in a data collection and reporting process, to be established by the Department in cooperation with the Advisory Committee."
3. The order required the submittal to and the approval of a drilling prospectus by IDWR when a water user or applicant "proposes to construct, repair, deepen or enlarge a well"
4. The order required that "[a]n applicant for appropriation of ground water within the SBGWMA is required to furnish sufficient technical data and plans to allow a preliminary determination by the Director that water is available, that existing users will not be injured, and that depletion of the aquifer will not be increased."
5. The order creating the management area formed an advisory committee for management of the ground water resource. The committee was charged with the following duties: (a) Serve as a forum for collecting and reviewing data obtained relative to the SBGWMA; (b) Serve as a forum for mediating water related issues involving water users within the SBGWMA; and (c) Develop a ground water management plan for the SBGWMA as a proposal to the Director.
6. On March 9, 2001, the committee submitted a ground water management plan for the SBGWMA (hereafter referred to as "the plan").

7. Information submitted with the plan demonstrates that the water users within the management area, and specifically the water users represented on the advisory committee, have taken significant actions to balance the ground water withdrawals with ground water recharge within the management area.

8. The plan establishes water use policies and requires monitoring and reporting. The plan and the details contained therein are incorporated into these findings of fact without specific reference except as otherwise discussed.

9. The plan proposes protection from forfeiture of a water right when one of the following actions is taken by one of the water right holders:

Development and use of alternate water sources;

Reduced ground water use;

Improvements in water management techniques; or

Any other case-specific condition acknowledged by statute, regulation, a Court, or the Director.

9. The general plan calls for submittal of individual water management plans by all water users who divert more than 50 acre feet annually and who are required to report annually.

10. Summary documents attached to the general plan describe specific actions by the Micron Technology, Inc. and United Water Idaho to accomplish these tasks. The documents are characterized as summaries. Other water users have not yet submitted any individual plan. Preparation of a detailed, individual plan by each of the users is contemplated by the general plan.

11. Nonuse of a ground water right is a reduction in use. A mere reduction in use without additional conditions related to the nonuse could lead to unwarranted protection of a water right from forfeiture.

12. The plan does not discuss procedures for recommending changes in the boundaries of the ground water management area.

13. The plan asks the director to continue requiring monitoring and reporting by all water users owning water rights authorizing diversion exceeding 0.20 cfs.

14. A letter transmitting the plan to the director requested consideration and action by the director related to the drilling of exempted domestic wells. The letter asked the following:

Should IDWR require a predetermination of water availability before approving a well drilling application for an exempted well in the management area?

Should IDWR curtail or otherwise limit the drilling of exempted wells in the management area?

Should IDWR request that local building permit approvals include consumer information about well drilling concerns, water availability, depths to water in the aquifer or other relevant information?

CONCLUSIONS OF LAW

1. The Southeast Boise Ground Water Management Area was properly created under Idaho Code § 42-233b.

2. Idaho Code § 42-233b states, in pertinent part:

When the director of the department of water resources designates a ground water management area, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan should provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

3. Idaho Code § 42-223 (4) states:

A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section . . . 42-233b, Idaho Code.

4. The Southeast Boise Ground Water Advisory Committee has presented an acceptable general management plan to the Director that can be conditionally approved. Conditions related to additional submittals, IDWR review of specific proposals, and additional administrative proceedings are set forth in the order below.

5. Concerns about the drilling of exempted domestic wells in the management area are legitimate. The advisory committee should develop and recommend to the Director a public process for addressing these concerns.

ORDER

IT IS HEREBY ORDERED that the management plan submitted by the Southeast Boise Ground Water Advisory Committee is APPROVED under the following conditions:

1. Any portion of a valid water right authorizing the beneficial use of ground water is protected from forfeiture if the equivalent level of beneficial use is conducted with water from an alternative source of water.

2. Any portion of a valid water right authorizing the beneficial use of ground water is protected from forfeiture if the equivalent level of beneficial use is conducted even though less water is diverted because of demonstrated conservation methods employed by the water user.

3. If the reduction in ground water use is not the result of conservation or replacement as described above, the nonuse of water when a valid water right authorizes use is not protected from forfeiture unless the specific proposal for non-use is pre-approved by IDWR and the advisory committee. Preapproval could be obtained by approval by the Director of the individual plans submitted by the water users.

4. The water right holders within the SBGWMA averaging diversion in excess of 50 acre feet shall submit individual water use plans within one year of the date of this order. After submittal, the plans should be reviewed by the advisory committee, amended based on any recommendations of the committee, and submitted to the Director for final approval.

5. Monitoring and reporting shall continue as set forth in the order creating the management areas and in the plan unless changed by further order of the Director.

6. At its annual meeting, the advisory committee shall review the data from the reports of the various water users, and shall submit to the Director any recommendations, in writing, regarding administration of the water rights, changes in the diversion monitoring and reporting requirements, changes in the network of water level monitoring wells, and changes in the boundaries of the management area based on the data reviewed.

IT IS FURTHER ORDERED that the advisory committee shall develop and recommend a public participation process to address concerns expressed about the drilling of exempt domestic wells. The recommendation should include any formal pleading from the advisory committee to initiate the process; any procedures for giving notice to and gathering input from the public, including the need for seeking participation by other interested persons outside the boundary of the management area; any recommendations requiring change in laws by legislation or by rule making; and how IDWR should make a final determination regarding this issue.

Dated this _____ day of September, 2002.

Norman C. Young
Administrator
Water Management Division